

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WILLIAM J. KENEDY,)	
)	
Plaintiff,)	Civil Action No. 12-113
)	Judge Cathy Bissoon
v.)	Chief Magistrate Judge Lisa Pupo Lenihan
)	
DAN ONORATO, <i>et. al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

William J. Kennedy (“Plaintiff”) is a state prisoner who currently is incarcerated at the State Correctional Institution at Smithfield, Pennsylvania. Plaintiff brings the instant cause of action pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, *et seq.*, alleging that Defendants violated his rights under the Eighth and Fourteenth Amendments to the Constitution of the United States.

This matter was referred to a United States Magistrate Judge for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrate Judges. On September 7, 2012, Defendants Onorato and Allegheny County Prison filed a motion to dismiss. (Doc. 18). Plaintiff was granted multiple extensions of time to respond to the motion, but, as of the date of this writing, he has not done so. Additionally, the magistrate judge ordered Plaintiff to show good cause why the remaining Defendants – who were not served the complaint – should not be dismissed for failure to prosecute. (Doc. 32). Plaintiff also has not responded to that order.

On April 17, 2013, the magistrate judge issued a report and recommendation recommending that the motion to dismiss be granted, and that the remaining Defendants be dismissed pursuant to Rules 4(m) and 41. (Doc. 35). Plaintiff responded with objections and a

motion to appoint counsel on May 7, 2013. (Doc. 37). While the magistrate judge denied the motion to appoint counsel, (Doc. 38), she ordered counsel for Defendants Onorato and Allegheny County Prison to file a written response as to whether there were any current or former employees of Allegheny County Jail matching the names of the remaining Defendants. Text Order of May 7, 2013. Counsel responded in the negative. (Doc. 39).

After *de novo* review of the pleadings and documents in the case, together with the report and recommendation (Doc. 35), and Plaintiff's objections thereto (Doc. 37), the following ORDER is entered:

AND NOW, this 12th day of June, 2013,

IT IS HEREBY ORDERED that Defendants Onorato and Allegheny County Prison's Motion to Dismiss (Doc. 18) is GRANTED.

IT IS FURTHER ORDERED that Defendants Sergeant Randy and Pesio are DISMISSED, without prejudice, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the magistrate judge's report and recommendation (Doc. 35) is adopted as the opinion of this Court.

BY THE COURT:

s/Cathy Bissoon
CATHY BISSOON
UNITED STATES DISTRICT JUDGE

cc:
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